Filed 9/10/15 Chiapuzio v. Paxton CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JAMES CHIAPUZIO, Individually and as Conservator, etc.,

Plaintiff, Cross-defendant and Respondent,

v.

HSIMING PAXTON, Individually and as Trustee, etc.,

Defendant, Cross-complainant and Appellant;

MARIANNE VAN RIPER,

Cross-defendant and Respondent.

G050656

(Super. Ct. No. 30-2012-00547338)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David T. McEachen, Judge. Affirmed. Motion to dismiss amended appeal. Denied as moot.

FitzGerald Yap Kreditor, Michael J. FitzGerald, Eric P. Francisconi and Natalie N. FitzGerald for Defendant, Cross-complainant and Appellant.

Ross, Wersching & Wolcott, Suzanne M. Tague and Gianna Gruenwald for Plaintiff, Cross-defendant and Respondent and for Cross-defendant and Respondent.

* * *

INTRODUCTION

When Anton Chiapuzio (decedent) died in 2012, he left four adult children from his first marriage. At the time, decedent was living with Hsiming Paxton, to whom he was not legally married. Decedent's children and Paxton filed competing complaints in civil court and petitions in probate court. Just before the civil court cases were to go to trial, Paxton and decedent's children reached a "global settlement." Paxton later filed several new petitions in probate court.

Decedent's children filed a motion to confirm the settlement and for entry of judgment. (Code Civ. Proc., § 664.6.) The trial court granted the motion, and Paxton appeals from the judgment entered thereon. We affirm. Substantial evidence supports the judgment and the findings underlying it.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Decedent and his first wife, Sue Chiapuzio,[1] had four children. In 1994, decedent and Sue executed a family trust. Sue died in 2004.

Decedent and Paxton met soon after Sue's death. In 2007, decedent revoked his survivor's trust of the 1994 family trust and executed a new revocable trust and a will, which made provision for Paxton if decedent and Paxton were married at the time of decedent's death. In 2009, decedent and Paxton participated in a vow renewal ceremony on a cruise ship, after which decedent believed they were married. On August 9, 2010, decedent executed a new pourover will and the Chiapuzio Irrevocable Trust dated August 9, 2010, in which he named Paxton as his wife, and named her as the

[1] We will use Sue Chiapuzio's first name to avoid confusion; we intend no disrespect.

sole beneficiary of his will and trust. Decedent transferred his home to the 2010 irrevocable trust.

In February 2012, decedent's son, James Chiapuzio, was named conservator of decedent's person and estate. In that capacity, Chiapuzio filed a complaint against Paxton, alleging causes of action for physical elder abuse, financial elder abuse, conveyance or transfer of property belonging to decedent, fraud, constructive fraud, negligence, breach of fiduciary duty, and conversion. The complaint alleged that decedent's physical and mental health had deteriorated after Sue's death, so that he was unable to manage his finances or resist Paxton's undue influence. The complaint also alleged Paxton had transferred assets from decedent's accounts and into her own name beginning soon after she met decedent. The complaint alleged that Paxton tricked decedent into believing they were married, although she knew full well that they were not. The complaint further alleged that Paxton failed to give decedent his medication, which caused him to fall into a coma and become hospitalized. The complaint requested damages and further requested that Paxton be disinherited from decedent's estate plan pursuant to Probate Code section 259.

Paxton filed a cross-complaint against two of decedent's children, Chiapuzio and Marianne Van Riper, alleging interference with prospective economic advantage, intentional interference with contractual relations, intentional infliction of emotional distress, and physical elder abuse.

Decedent died on May 5, 2012. Chiapuzio applied for a writ of attachment, seeking to attach two Fidelity bank accounts jointly held by decedent and Paxton, which contained approximately $430,000. In support of the application for a writ of attachment, Chiapuzio alleged that immediately after decedent was admitted to the hospital, Paxton transferred about $262,000 from a Fidelity account held by decedent and Paxton as tenants in common to an account owned by them as joint tenants with a right of survivorship. Chiapuzio also alleged that Paxton transferred $200,000 from a trust

account for which she was the trustee, and decedent was the sole beneficiary, to an account solely in her own name. The trial court issued an order freezing the accounts.

Paxton filed a petition to probate decedent's 2010 pourover will, which favored her. Decedent's children objected to the 2010 will, on grounds of fraud, mistake of fact, incapacity, and undue influence. Van Riper filed a petition to probate the 2007 will, which named her as executor. Decedent's children also filed a petition to invalidate the 2010 irrevocable trust, on grounds of fraud, mistake of fact, incapacity, and undue influence. Paxton objected to both petitions.

On April 10, 2013, the parties appeared in civil court for trial on the competing elder abuse actions. Paxton's counsel requested a settlement conference. The settlement conference was successful, and an oral settlement was put on the record. The settlement provided that Paxton would receive the money in the Fidelity accounts; $30,000 from the probate estate; and all personal property acquired after 2006. Van Riper, in her fiduciary role, would receive decedent's home, personal property acquired before 2006, and all other estate assets. The settlement was "a global settlement" of the competing elder abuse actions and the pending probate petitions. The settlement further provided (1) the 2007 will and trust and the 2010 will and irrevocable trust were void, (2) the 1994 will was valid, and (3) the 1994 survivor's trust was reinstated. All pending probate petitions were withdrawn or dismissed with prejudice, and the parties agreed that a probate petition consistent with the terms of the settlement would be filed. Finally, the parties agreed to "waive their rights under *Civil Code* section 1542."

After the terms of the settlement were read into the record, the following colloquy occurred:

"The Court: Okay. Do you want to inquire of your client? Would you like to inquire of your client?

"Mr. Fridley [(Paxton's counsel)]: You have to answer 'yes.'

"Hsiming Paxton: Yes.

"The Court: Do you understand the terms of the settlement, and do you agree to those terms?

"Hsiming Paxton: Yes, very sad.

"The Court: And you understand that you can't come back to court later and try to unwind this agreement, correct?

"Hsiming Paxton: Correct."

After the Fidelity account assets had been released to Paxton, title of the house had been transferred to Van Riper, and Paxton had vacated the house, Van Riper filed a petition for final distribution in the probate court. In January 2014, Paxton filed new pleadings in the probate court: objections to Van Riper's petition for final distribution; a spousal property petition; a petition for a determination that Paxton was an heir of decedent as an omitted, putative spouse; and a trust petition seeking a share of decedent's irrevocable trust.

On April 22, 2014, Chiapuzio and Van Riper filed a motion to confirm the settlement and for entry of judgment, pursuant to Code of Civil Procedure section 664.6. After briefing and a hearing, the trial court granted the motion: "Moving parties have sufficiently established the existence of a valid and binding settlement agreement of the entire case that was made pending litigation. The material terms of the settlement agreement were explicitly defined, Judge Moss questioned the parties regarding their understanding of those terms, and the parties expressly acknowledged their agreement to be bound by those terms (including the Civil Code Section 1542 waiver). Thus, the elements pursuant to CCP Section 664.6 have been met. . . . [¶] Paxton alleges that she does not speak English very well, and that she did not intend to waive her Civil Code Section 1542 rights. However, the record is clear that the settlement was a 'global settlement' for the unlimited civil action and the separate probate court action, that both parties waived their Civil Code Section 1542 rights, that Paxton was at the hearing and

stated on the record that she agreed to the terms (although she believes that terms were 'very sad'), and that she understood that she 'can't come back to court later on and try to unwind this agreement.' [¶] . . . [¶] Paxton's filing of the additional pleadings and adding a new theory of recovery in probate court is a breach of the Civil Code Section 1542 waiver. Plaintiff/Cross-Defendant James Chiapuzio and Cross-Defendant Marianne Van Riper contend that they need judgment entered in this action in order to raise res judicata/collateral estoppel in the separate probate court action. The court GRANTS Plaintiff/Cross-Defendant James Chiapuzio and Cross-Defendant Marianne Van Riper's Motion to Enforce the Settlement Agreement and enter Judgment in this case."

Judgment was entered, and Paxton filed a timely notice of appeal.

DISCUSSION

I.

DID THE TRIAL COURT ERR IN GRANTING THE MOTION TO ENTER JUDGMENT?

We review a judgment entered pursuant to Code of Civil Procedure section 664.6 to determine whether it is supported by substantial evidence. (*Osumi v. Sutton* (2007) 151 Cal.App.4th 1355, 1360.)

Paxton's appeal challenges a single finding in the judgment: "Each party waived the protections of California Civil Code section 1542, and this settlement agreement applies to any and all known and unknown claims between the parties." Civil Code section 1542 provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Paxton argues there was no general release, so the provisions of Civil Code section 1542 never came into play. Paxton contends that the term "global settlement," as used by the parties when they placed the settlement on the record in court, meant only the

pending elder abuse and probate actions. Paxton also contends that the settlement did not include all other known and unknown claims. We must consider the terms of the settlement to determine whether the global settlement is a general release under section 1542. "[M]ere recital . . . that the protection of Civil Code section 1542 is waived, or that the release covers unknown claims or unknown parties is not controlling. Whether the releaser intended to discharge such claims or parties is ultimately a question of fact. [Citations.]" (*Leaf v. City of San Mateo* (1980) 104 Cal.App.3d 398, 411; see *Butler v. Vons Companies, Inc.* (2006) 140 Cal.App.4th 943, 949-950.)

A review of the terms of the parties' settlement reveals that the intent of the parties was to create a full, general release of claims. The parties' settlement (1) resolves all of Chiapuzio's causes of action against Paxton, and disposes of Chiapuzio's claims for damages and request that Paxton be disinherited from decedent's estate plan; (2) resolves all of Paxton's causes of action against Chiapuzio and Van Riper; (3) determines which of decedent's numerous wills and trusts are valid; and (4) provides Paxton with assets from decedent's estate, while confirming to Van Riper, as executor and/or trustee, all other estate assets. Substantial evidence supports the trial court's implied finding that the parties intended the settlement to include a general release of all claims between them. Based on this record, it is clear that the parties intended to resolve *all* claims between them. Accordingly, Paxton's trial counsel performed his duty to Paxton by causing the settlement to be placed on the record and to obtain Paxton's consent to it.

Paxton also argues she did not waive her statutory protections because a waiver of Civil Code section 1542 must be in writing. Paxton notes that no published California case holds that an oral waiver of section 1542 is valid. It is also true, however, that no published California case holds that an oral waiver of section 1542 is invalid. Code of Civil Procedure section 664.6 permits a trial court to enforce as a judgment a settlement agreement that was signed by the parties or that was agreed to by the parties "orally before the court." We see no reason why a waiver of section 1542 cannot be a

part of an enforceable settlement, the terms of which were stated on the record before the court.

Paxton further argues that the meaning of a Civil Code section 1542 waiver was not explained to her by her attorney or by the court. In her declaration in opposition to the motion for entry of judgment, Paxton stated: "As stated in the Transcript of the Proceedings, Ms. Gruenwald refers to the parties waiving their rights under Civil Code section 1542. That was the first time I had heard that code section. Next thing I know my attorney is nudging me and telling me that I have to say 'yes.' English is my second language so I was rather confused and felt rushed."

"It has often been held that if the releaser was under a misapprehension, not due to his own neglect, as to the nature or scope of the release, and if this misapprehension was induced by the misconduct of the releasee, then the release, regardless of how comprehensively worded, is binding only to the extent actually intended by the releaser. [Citations.]" (*Casey v. Proctor* (1963) 59 Cal.2d 97, 103, fn. omitted.) However, it is also true that a mistaken belief that the release does not relate to certain claims does not entitle the releaser to rescind it. (*Id.* at pp. 104-105.) The trial court's finding that Paxton understood her waiver was supported by substantial evidence of her statements on the record that she was waiving the protections of Civil Code section 1542, and that she understood she could not undo the settlement.

Finally, Paxton argues that because there was no general release and therefore no possible waiver of Civil Code section 1542, the only way she could have waived her claim that she is an omitted, putative spouse would have been through a specific release of such a claim and no such release exists. Where a decedent does not provide for a surviving spouse in testamentary instruments executed before their marriage, the omitted spouse is entitled to a share of the decedent's estate. (Prob. Code, § 21610.) A surviving putative spouse is also entitled to a statutory share. (*Estate of Sax* (1989) 214 Cal.App.3d 1300, 1306.) Status as a putative spouse requires that one or both

of the parties had an objectively reasonable, good faith belief that the marriage was valid. (Fam. Code, § 2251, subd. (a)(1); *In re Marriage of Ramirez* (2008) 165 Cal.App.4th 751, 756.) As explained *ante*, the parties did agree to a general release of claims, and this argument is therefore moot.

II.

SHOULD THE APPEAL BE DISMISSED?

Respondents contend the appeal should be dismissed because Paxton accepted the fruits of the judgment and therefore cannot appeal from the judgment as well. In light of our holding, we conclude the motion to dismiss the appeal is moot.

DISPOSITION

The judgment is affirmed. Respondents to recover costs on appeal.

FYBEL, J.

WE CONCUR:

ARONSON, ACTING P. J.

THOMPSON, J.